

Written comments should be submitted to the Manager, Corporate Communications—CK; Bonneville Power Administration; P.O. Box 12999; Portland, Oregon, 97212.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Hansen, Public Involvement and Information Specialist, at the address listed above, (503) 230-4328 or call toll-free 1-800-622-4519.

Information also may be obtained from: Mr. Steve Hickok, Group Vice President, Sales and Customer Service, S-700, P.O. Box 3621, Portland, OR, 97232, (503) 230-5356.

Mr. George Eskridge, Manager, SE Sales and Customer Service District, 1101 W. River, Suite 250, Boise, ID 83702, (208) 334-9137.

Mr. Ken Hustad, Manager, NE Sales and Customer Service District, Crescent Court, Suite 500, 707 Main, Spokane, WA 99201, (509) 353-2518.

Ms. Ruth Bennett, Manager, SW Sales and Customer Service District, 703 Broadway, Vancouver, WA 98660, (360) 418-8600.

Ms. Marg Nelson, Manager, NW Sales and Customer Service District, Suite 400, 1601 5th Avenue, Suite 1000, Seattle, WA 98101-1670, (206) 216-4271.

**Responsible Official:** Mr. Dennis Metcalf, BPA Transmission Team Lead, is the responsible official for the development of BPA's transmission terms and conditions.

**SUPPLEMENTARY INFORMATION:** BPA is proposing to establish terms and conditions of general applicability for transmission services comparable to the uses BPA provides itself over the integrated network transmission system of the FCRTS. These proposed terms and conditions for comparable services are intended to: (1) Respond to customer requests in the context of the renegotiation of BPA's power sales contracts that BPA eliminate its transmission-based market power; (2) with respect to network transmission services, comply with the Federal Energy Regulatory Commission's (FERC's) requirement that members of regional transmission associations develop and publish tariffs meeting the Commission's comparability standards; and (3) facilitate an opportunity for FERC to review the rates for these services, which BPA has filed concurrently with this notice as meeting the just, reasonable, and not unduly discriminatory or preferential standard, in the context of the associated contractual terms and conditions. The tariffs are proposed to be effective October 1, 1996.

The Federal Power Act amendments passed by Congress in the Energy Policy Act of 1992, Pub. L. No. 102-486, 106 Stat. 2776 (1992), provide that BPA may institute a formal regional hearing on transmission terms and conditions which it proposes to establish for general applicability. 16 U.S.C. § 824k(i)(2). BPA has instituted that proceeding through a prehearing conference on March 22, 1995, and parties to the proceeding have been designated. A full description of the procedural background is found in BPA's "Notice of Proposed Wholesale Power Rates and Transmission Rates" published elsewhere in this issue. Parties will be served with the proposals on July 10, 1995. Persons who are not parties to the proceeding but who wish to comment on the proposals are "participants" and may request copies of the proposals from BPA's Public Information Center, BPA Headquarters Building, 1st Floor, 905 NE, 11th Street, Portland, OR, 97208, or BPA's Document Request Line, 503-230-3478 or toll free 1-800-622-4520. Comments from participants are incorporated into the Official Record and will be considered by the Hearing Officer and the Administrator.

Public field hearings are an opportunity for participants to have their views included in the official record. Participants may appear at the field hearings and present oral testimony. Written transcripts will be made at all of the field hearings. The transcripts of these hearings will be part of the record upon which the Administrator makes final rate decisions. All of the field hearings are scheduled to begin at 7:00 p.m. registration begins at 6:30 p.m. Following are the tentative dates and locations for the field hearings. Confirmation of these hearing dates will be made through mailings and public advertising or by calling BPA Corporate Communications at the telephone number listed in Section 1 above.

September 19, 1995.

Best Western Burley Inn, 800 N. Overland Avenue, Burley, Idaho 83318.

September 20, 1995.

Cavanaugh's, Ballroom B, 200 North Main, Kalispell, Montana 59901.

September 21, 1995.

Red Lion GateWay, 3280 Gateway Drive, Springfield, Oregon 97477.

September 26, 1995.

Howard Johnson Plaza Hotel, Widbey-Camano Room, 3105 Pine, Everett, Washington.

September 27, 1995 Cavanaugh's, East 110 Fourth Avenue, Spokane, Washington 99202.

September 28, 1995.

Pasco Red Lion, Design Room, 2525 North 20th, Pasco, Washington 99301.

BPA is proposing comparable network transmission tariffs based on the tariffs contained in the FERC's Notice of Proposed Rulemaking on Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities, Docket No. RM95-8-000. Proposed commitments and requirements are described for: (1) Integrated network service pursuant to which an entity may use the integrated network transmission system of the FCRTS flexibly to meet its network loads on a basis comparable to BPA's native load obligations; and (2) flexible, point-to-point firm and nonfirm transmission services over the integrated network transmission system of the FCRTS and available to serve network loads as well as off-system sales.

Issued in Portland, Oregon, on June 28, 1995.

**Randy W. Hardy,**

*Administrator and Chief Executive Officer.*

[FR Doc. 95-16617 Filed 7-5-95; 8:45 am]

BILLING CODE 6450-01-P

## Office of General Counsel

### Proposed Consent Order With Occidental Petroleum Corporation

**AGENCY:** Department of Energy.

**ACTION:** Notice of proposed consent order and opportunity for public comment.

**SUMMARY:** The Department of Energy (DOE) announces a proposed Consent Order between the DOE and Occidental Petroleum Corporation (Occidental), including its wholly owned subsidiary OXY USA Inc. (OXY) which was formerly Cities Service Oil and Gas Corporation, successor in interest to Cities Service Company (Cities).

The agreement proposes to resolve matters relating to Occidental's compliance with the federal petroleum price and allocation regulations for the period October 1, 1979 through January 27, 1981. If this Consent Order is made final, Occidental will pay to the DOE two hundred seventy five million dollars (\$275,000,000). Within thirty (30) days of the effective date of the Consent Order, Occidental shall make an initial payment to the DOE of one hundred million dollars (\$100,000,000),

and thereafter five (5) equal annual payments of thirty-five million dollars (\$35,000,000), plus interest at the rate of seven and six-tenths percent (7.6%), compounded quarterly, on the unpaid balance. This Consent Order would not affect the Consent Order between Cities and DOE dated October 31, 1979, which, except as otherwise provided therein, covered the period August 19, 1973 through September 30, 1979.

To distribute the moneys collected under the Consent Order, DOE's Office of Hearings and Appeals (OHA) will be petitioned to implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in which proceedings any persons who claim to have suffered injury from the alleged overcharges would have the opportunity to submit claims for payment.

Pursuant to 10 CFR 205.199J, DOE will receive written comments on the proposed Consent Order for thirty (30) days following publication of this Notice and will consider all comments received from the public in determining whether to accept the settlement and issue a final Order, renegotiate the agreement and issue a modified agreement as a final Order, or reject the settlement. DOE's final decision will be published in the **Federal Register**, along with an analysis of significant written comments in response to this Notice, as well as any other considerations that were relevant to the final decision.

**DATES:** Comments must be received by August 7, 1995.

**ADDRESSES:** Interested parties are invited to submit written comments concerning this proposed Consent Order to: Occidental Consent Order Comments, U.S. Department of Energy, Office of General Counsel, GC-43, 1000 Independence Avenue, SW, Washington, DC 20585. Any information or data considered confidential by the person submitting it must be identified as such in accordance with the provisions of 10 CFR 205.9(f).

**FOR FURTHER INFORMATION CONTACT:** Betty L. Dingle-Brown, Department of Energy, GC-43, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 523-3011.

#### SUPPLEMENTARY INFORMATION:

- I. Resolution of Regulatory Issues
- II. Determination of Reasonable Settlement Amount
- III. Terms and Conditions of the Consent Order

#### I. Resolution of Regulatory Issues

Occidental is a successor in interest to Cities, which was a refiner, producer and reseller subject to the DOE's audit

jurisdiction to determine compliance with the Federal Petroleum Price and Allocation Regulations. During the period covered by this proposed Order (October 1, 1979 through January 27, 1981),<sup>1</sup> Cities engaged in, among other things, the production, importation, purchase, sale, exchange and refining of crude oil, and the purchase and sale of refined product. As a result of its audit, the DOE raised certain issues with respect to 91 reciprocal purchases and sales of crude oil in which Cities sold price-controlled crude oil to resellers and concurrently purchased price exempt-certified crude oil at a discount from the market price. These transactions and OXY's potential liability arising therefrom constitute the central issue which would be resolved by the proposed Order.

In a Proposed Remedial Order issued in March 1985, DOE sought to hold OXY liable for overcharges in these transactions, seeking \$263.8 million plus prejudgment interest, on the ground that Cities violated DOE's crude oil resale price rule applicable to refiners. DOE prevailed at the initial stage before the OHA. *Cities Service Oil and Gas Corp.*, 17 DOE ¶ 83,021 (1988). Five years later, the OHA decision was vacated by the Federal Energy Regulatory Commission (FERC), to which Cities had appealed. *Cities Service Oil and Gas Corp.*, 65 FERC ¶ 61,403 (1993), *reconsideration denied*, 66 FERC ¶ 61,222 (1994). The relevant statute, 42 U.S.C. 7193, provides that FERC's decision in such a case is a final action by DOE.<sup>2</sup>

On February 21, 1992, pursuant to OHA's remand in the 1988 Remedial Order and while Cities' appeal to FERC was pending, DOE issued a Revised Proposed Remedial Order (RPRO) to OXY under an alternative theory of liability. The RPRO charged that in 82 reciprocal crude oil transactions between October 1979 and December 1980, Cities violated DOE's Entitlements Program reporting regulations: (1) That the transactions served no legitimate business or economic purpose and were therefore legally ineffective in transforming Cities' controlled crude oil into entitlements purchase-exempt

crude; and (2) that Cities had no plausible basis for its professed belief that entitlements-exempt uses, rather than miscertification, explained the deep discounts Cities obtained on the exempt-certified crude. *OXY USA Inc.*, OHA Case No. LRO-0003. In the remand proceeding, DOE is seeking \$253.767 million in refunds, plus prejudgment interest which would currently total \$915.533 million.

A tentative settlement reached between DOE and Occidental in 1989 was rejected by the DOE in 1991 upon consideration of the comments and testimony submitted in the course of the public process.<sup>3</sup> Attempts to renegotiate or modify the proposed Order were unavailing, and later efforts conducted pursuant to the FERC's settlement procedures also led to an impasse. More recently, in January 1995, DOE and Occidental, along with intervenor parties, agreed to attempt a structured mediation. The settlement proposed today represents the product of that mediation process.

#### II. Determination of Reasonable Settlement Amount

DOE has preliminarily agreed to the settlement terms after considering the factual and legal issues in dispute in the litigation, assessing the litigation risks associated with establishing the alleged violations, and considering the benefit to the public from prompt receipt of the benefits from settlement of the extensive number of legal and factual issues that would require intensive additional litigation to resolve. DOE also considered the litigation risk factors generally present in all regulatory disputes in this program based on its current legal framework. The total amount of OXY's potential liability resulting from the subject transactions could only be recovered by the government if, in litigation, all issues were resolved in the DOE's favor. The risks inherent in such litigation make such an outcome uncertain.

Based on consideration of all of these factors, DOE's preliminary determination is that Occidental's agreement to the terms of the proposed Consent Order constitutes a settlement which is in the public interest.

#### III. Terms and Conditions of the Consent Order

If the Consent Order is made final, Occidental Petroleum and OXY will be jointly and severally liable for the following payments: \$100 million within 30 days of the Consent Order

<sup>1</sup> In a previous Consent Order dated October 31, 1979, and generally covering the period August 19, 1973 through September 30, 1979, Cities agreed to price rollback, refund and bank reduction remedies totaling \$177 million.

<sup>2</sup> Two groups of intervenors, however, attempted to appeal FERC's decision. *Alabama v. FERC*, CA No. 94-0347 (D.D.C.), and *Consolidated Edison Co. of New York, Inc. v. O'Leary*, CA No. 94-0352 (D.D.C.). On June 8, 1995, the court dismissed both suits based on the plaintiffs' lack of standing. Plaintiffs in the second case have noticed their appeal.

<sup>3</sup> 54 FR. 22469 (May 24, 1989); 54 FR. 35371 (Aug. 25, 1989); 56 FR. 21361 (May 8, 1991).

becoming effective, and five subsequent annual installments of \$35 million plus interest on the unpaid balances at 7.6% per annum, compounded quarterly. In all, the principal payments will be \$275 million, and the interest will total approximately \$41 million. Payments which are more than fifteen days late will accrue interest at the rate of 15.2% per annum. The DOE's Office of Hearings and Appeals will be petitioned to implement Special Refund Procedures for distribution of the settlement funds pursuant to 10 CFR part 205, subpart V.

Upon becoming effective, DOE and Occidental would file appropriate pleadings to withdraw all claims and dismiss with prejudice all proceedings covered by the Consent Order, including the case pending before the OHA.

The agreement does not affect any rights Occidental may have in connection with the funds at issue in a specific refund proceeding pending before the DOE's Office of Hearings and Appeals, *Enron Corp./OXY USA Inc.*, OHA Case No. RF340-00112, or in the exception proceeding originally styled *The 341 Tract Unit of the Citronelle Field/OXY USA Inc.*, OHA Case No. RF345-00021 and now under review in *Amoco Oil Co., et al. v. DOE*, CA No. H-94-2423 (S.D. Tex.) and in *R. H. Stechman, et al. v. DOE*, CA No. 94-0887-A-M (S.D. Ala.).

If the agreement is made final, Occidental will withdraw certain requests and portions of other requests made by its attorneys under the Freedom of Information Act. Occidental and DOE mutually release each other from claims and actions arising under the subject matters covered by the proposed Consent Order. Also, the proposed Order does not affect the right of any other party to take action against Occidental, or of Occidental or the DOE to take action against any other party. Finally, Occidental may withdraw from the agreement if the settlement is not made final by the one hundred twentieth (120th) day following execution.

#### Submission of Written Comments

The proposed Consent Order cannot be made effective until the conclusion of the public review process, of which this Notice is a part.

All comments received by the thirtieth (30th) day following publication of this Notice in the **Federal Register** will be considered before determining whether to adopt the proposed Consent Order as a final Order. Any modifications of the proposed Consent Order which significantly alter its terms or impact

will be published for additional comments. If, after considering the comments it has received, DOE determines to issue the proposed Consent Order as a final Order, the proposed Order will be made final and effective by publication of a Notice in the **Federal Register**.

Issued in Washington, DC, on June 29, 1995.

Eric J. Fygi,

Deputy General Counsel.

#### I. Introduction

101. This Consent Order is entered into between Occidental Petroleum Corporation ("Occidental"), including its wholly owned subsidiary OXY USA Inc. ("OXY") (formerly Cities Service Oil and Gas Corporation, successor in interest to Cities Service Company ("Cities Service")), and the United States Department of Energy ("DOE"). Except as otherwise provided herein, this Consent Order settles and finally resolves all civil and administrative claims and disputes, whether or not heretofore asserted, between the DOE, as hereinafter defined, and Occidental, as hereinafter defined, relating to Occidental's compliance with the federal petroleum price and allocation regulations, as hereinafter defined, during the period October 1, 1979, through January 27, 1981 (all the matters settled and resolved by this Consent Order are referred to hereinafter as "the matters covered by this Consent Order"). This Consent Order does not affect the Consent Order between Cities Service and DOE dated October 31, 1979, which, except as otherwise provided therein, covered the period August 19, 1973, through September 30, 1979.

#### II. Jurisdiction, Regulatory Authority and Definitions

201. This Consent Order is entered into by the DOE pursuant to the authority conferred upon it by Sections 301 and 503 of the Department of Energy Organization Act ("DOE Act"), 42 U.S.C. 7151 and 7193, Executive Order No. 12009, 42 FR 46267 (1977); Executive Order No. 12038, 43 FR 4957 (1978); and 10 CFR 205.199J.

202. For purposes of this Consent Order, the phrase "federal petroleum price and allocation regulations" means all statutory requirements and administrative regulations and orders regarding the pricing and allocation of crude oil, refined petroleum products, natural gas liquids, and natural gas liquid products, including the entitlements and mandatory oil import programs, administered by the DOE.

The federal petroleum price and allocation regulations include (without limitation) the pricing, allocation, reporting, certification, and recordkeeping requirements imposed by or under the Economic Stabilization Act of 1970, the Emergency Petroleum Allocation Act of 1973, the Federal Energy Administration Act of 1974, the DOE Act, any and all amendments to said acts, Presidential Proclamation 3279, all applicable DOE regulations codified in 6 CFR parts 130 and 150 and 10 CFR parts 205, 210, 211, 212, and 213, and all rules, rulings, guidelines, interpretations, clarifications, manuals, decisions, orders, notices, forms, and subpoenas relating to the pricing and allocation of petroleum products. The provisions of 10 CFR 205.199J and the definitions under the federal petroleum price and allocation regulations shall apply to this Consent Order except to the extent inconsistent herewith. Reference herein to "DOE" includes, besides the Department of Energy, the Cost of Living Council, the Federal Energy Office, the Federal Energy Administration, the Office of Special Counsel, the Economic Regulatory Administration and all agencies succeeding to the DOE's authority to administer or enforce the federal petroleum price and allocation regulations. References in this Consent Order to "Occidental" shall include: (1) Occidental Petroleum Corporation, its subsidiaries and affiliates, and its and their predecessors, including Cities Service Company and Cities Service Oil and Gas Corporation, and their subsidiaries and affiliates, (2) all of Occidental's petroleum-related activities, whether as a refiner, producer, operator, working interest or royalty interest owner, reseller, retailer, natural gas processor, or otherwise, and (3) Occidental's present and former directors, officers and employees.

#### III. Facts

The stipulated facts upon which this Consent Order is based are as follows:

301. During the period covered by this Consent Order, Occidental was a "refiner", "producer" and "reseller" as those terms are defined in the federal petroleum price and allocation regulations and was subject to the jurisdiction of the DOE.

302. On October 31, 1979, Cities Service and the DOE entered into a Consent Order which settled all claims and disputes against Cities Service by the DOE, except as otherwise provided therein, for the period August 19, 1973, through September 30, 1979, with respect to the statutory and regulatory petroleum programs administered and

enforced by the DOE and its predecessor agencies.

303. Following the 1979 Consent Order, the DOE audited Cities Service's compliance with the federal petroleum price and allocation regulations for the period after September 30, 1979. As a result, the DOE raised certain issues with respect to certain related purchases and sales of crude oil in which Cities Service sold price-controlled crude oil to resellers and purchased exempt-certified crude oil from those resellers. The DOE initiated formal enforcement action alleging that these transactions violated certain provisions of the federal petroleum price and allocation regulations. Occidental maintains, however, that Cities Service's conduct with respect to these transactions was in all respects lawful and in accordance with the federal petroleum price and allocation regulations. The DOE and Occidental have each asserted its belief that its respective legal and factual positions regarding such transactions are meritorious. These positions were emphasized in the intensive review and exchange of information conducted during the audit, during litigation of those issues, and during the settlement negotiation process. Neither DOE nor Occidental disavows any position taken with respect to such matters. However, in order to avoid the expense of further protracted and complex litigation and the disruption of its orderly business functions, Occidental has agreed to enter into this Consent Order, which, among other things, resolves both the principal and interest component of the claims that the DOE has asserted against Cities Service and/or Occidental in connection with the above-described transactions. The DOE believes this Consent Order constitutes a satisfactory resolution of the matters covered herein and is in the public interest.

#### IV. Remedial Provisions

401. In full and final settlement of all matters covered by this Consent Order and in lieu of all other remedies which have been or might be sought by the DOE against Occidental for such matters under 10 CFR 205.1991 or otherwise, Occidental and OXY shall be jointly and severally liable to pay to the DOE two hundred seventy-five million dollars (\$275,000,000.00), plus interest, in the manner specified in paragraphs 402, 403, 404, and 405.

402. On or before the thirtieth (30th) day following the Effective Date of this Consent Order, either Occidental or OXY shall make an initial payment to the DOE of one hundred million dollars (\$100,000,000.00). The date of such payment is designated, for purposes of

this Consent Order, as the Initial Payment Date.

403. On or before each of the first five anniversaries of the Initial Payment Date, either Occidental or OXY shall pay to DOE an amount equal to thirty-five million dollars (\$35,000,000.00), plus interest at the rate of seven and six-tenths percent (7.6%), compounded quarterly, accrued on such payment from the Initial Payment Date to the date of such payment. If any anniversary of the Initial Payment Date is not a business day, the payment shall be due on the first business day following such anniversary.

404. Payments received after the due date shall include additional interest, calculated at the rate of 7.6 percent per annum for the first fifteen (15) days after the due date and 15.2 percent per annum thereafter.

405. The payments pursuant to paragraphs 402 through 404 shall be made by wire transfer in accordance with instructions furnished to Occidental and OXY by the DOE in a timely manner.

406. Inasmuch as this Consent Order settles both the principal and interest portions of all claims made by the DOE against Occidental, the principal portion of the payments made pursuant to paragraphs 402 through 404 shall be deemed to be a payment of principal and interest in the same ratio that the principal portion of the DOE's claim in the proceeding styled *In the Matter of OXY USA Inc.*, Case No. LRO-0003, currently pending before the Office of Hearings and Appeals ("OHA"), bears to the interest portion of the DOE's claim in that case as of the Effective Date.

407. Payments made pursuant to this Consent Order shall be distributed by the DOE pursuant to the special refund procedures prescribed by 10 CFR Part 205, subpart V.

#### V. Issues Resolved

501. All pending and potential civil and administrative claims, whether or not known, demands, liabilities, causes of action or other proceedings by the DOE against Occidental regarding Occidental's compliance with and obligations under the federal petroleum price and allocation regulations during the period covered by this Consent Order, whether or not heretofore raised by an issue letter, Notice of Probable Violation, Notice of Proposed Disallowance, Proposed Remedial Order, Remedial Order, actions in court or otherwise, are resolved, extinguished and released as to Occidental by this Consent Order. This Consent Order, however, does not resolve, extinguish,

release or otherwise affect DOE's claims against any other party.

502. (a) Except as otherwise provided herein, compliance by Occidental with this Consent Order shall be deemed by the DOE to constitute full compliance for administrative and civil purposes with all federal petroleum price and allocation regulations for matters covered by this Consent Order. In consideration for performance as required under this Consent Order by Occidental, the DOE hereby releases Occidental completely and for all purposes from all administrative and civil judicial claims, demands, liabilities or causes of action, including, without limitation, claims for civil penalties that the DOE has asserted or might otherwise be able to assert against Occidental before or after the date of this Consent Order for alleged violations of the federal petroleum price and allocation regulations with respect to matters covered by this Consent Order. The DOE will not initiate or prosecute any such administrative or civil judicial matter against Occidental or cause or refer any such matter to be initiated or prosecuted, nor will the DOE or its successors directly or indirectly aid in the initiation of any such administrative or civil judicial matter against Occidental or participate voluntarily in the prosecution of such actions. The DOE will not assert voluntarily in any administrative or civil judicial proceeding that Occidental has violated the federal petroleum price and allocation regulations with respect to the matters covered by this Consent Order or otherwise take any action with respect to Occidental in derogation of this Consent Order. However, nothing contained herein shall preclude the DOE from defending the validity of the federal petroleum price and allocation regulations.

(b) This Consent Order settles and finally resolves all aspects of Occidental's potential liability to the DOE under the federal petroleum price and allocation regulations, including but not limited to its capacity as an operator or working interest or royalty interest owner of a crude oil producing property. In addition, if Occidental was the operator of a property that produced crude oil for all or part of the period covered by this Consent Order, the DOE shall not initiate or prosecute any enforcement action against any person for noncompliance with the federal petroleum price and allocation regulations during such period relative to such property. Otherwise, the DOE reserves the right to initiate and prosecute enforcement actions against any person other than Occidental for

noncompliance with the federal petroleum price and allocation regulations, including suits against operators for overcharges for crude oil when Occidental is a working interest or royalty interest owner in such crude oil production. In that connection, Occidental and the DOE agree that the amount paid to the DOE pursuant to this Consent Order is not attributable to Occidental's activities as a working interest or royalty interest owner on properties on which it is not the operator. Furthermore, Occidental and the DOE agree that the Consent Order and the payments hereunder do not resolve, reduce or release the liability of any other person for violations on properties of which (but only for the times during which) Occidental is or was a working interest or royalty interest owner (and not the operator) or affect any rights or obligations between Occidental and the operator or any other working interest or royalty interest owner.

(c) The DOE will not seek or recommend any criminal fines or penalties based on information or evidence presently in its possession for the matters covered by this Consent Order, provided, however, that nothing in this Consent Order precludes the DOE from (1) seeking or recommending such criminal fines or penalties if information subsequently coming to its attention indicates, either by itself or in combination with information or evidence presently known to DOE, that a criminal violation may have occurred, or (2) otherwise complying with its obligations under law with regard to forwarding information of possible criminal violations of law to appropriate authorities. Nothing contained herein may be construed as a bar, estoppel or defense against any criminal or civil action brought by an agency of the United States other than the DOE under (i) Section 210 of the Economic Stabilization Act of 1970 or (ii) any statute or regulation other than the federal petroleum price and allocation regulations. Finally, this Consent Order does not prejudice the rights of any third party or Occidental in any private action, including an action for contribution by or against Occidental.

(d) Occidental releases the DOE completely and for all purposes from all administrative and civil judicial claims, liabilities or causes of action that Occidental has asserted or may otherwise be able to assert against the DOE relating to the DOE's administration of the federal petroleum price and allocation regulations, except that nothing herein is intended to affect in any way any rights Occidental may

have to receive a portion of the funds at issue in (1) the proceeding originally styled *The 341 Tract Unit of the Citronelle Field/OXY USA Inc.*, OHA Case No. RF345-00021, and now under review in *Amoco Oil Co., et al. v. DOE*, Civil Action No. H-94-2423 (S.D. Tex., filed July 15, 1994), and *R.H. Stechmann, et al. v. DOE*, Civil Action No. 94-0887-A-M (S.D. Ala., filed Nov. 17, 1994), and (2) the proceeding pending before OHA styled *Enron Corp./OXY USA Inc.*, OHA Case No. RF340-00112. However, neither this release nor any other provision of this Consent Order precludes Occidental from asserting any factual or legal position or argument as a defense to any action, claim, or proceeding brought by the DOE, the United States, or any agency of the United States. Nor does it preclude Occidental from asserting a defense, counterclaim or offset to any action, claim or proceeding brought by any other person.

(e) Nothing in this Consent Order shall affect any rights Occidental may have to challenge the DOE's failure or refusal to produce documents in response to requests therefor that have been or may in the future be made by Occidental or its attorneys pursuant to the Freedom of Information Act, 5 U.S.C. 502, *et seq.* ("FOIA"), except that Occidental hereby withdraws and waives its rights to have documents produced in response to the following requests: (1) The June 20, 1988 request submitted by Phillips, Nizer, Benjamin, Krim & Ballon (Request No. 8872206R); (2) paragraph 2 of the March 22, 1993 request submitted by Skadden, Arps, Slate, Meagher & Flom ("Skadden") (Request No. 93032402R); (3) paragraphs 1, 3-8, 13-15 and 17-18 of the June 3, 1993 request submitted by Skadden (Request No. 93060803RG); (4) the October 29, 1993 request submitted by Skadden (Request No. 93110217R); (5) the January 21, 1994 request submitted by Skadden (Request No. 94012510X); and (6) the two September 19, 1994 requests submitted by Skadden (both designated Request No. 94092001GC).

503. (a) Within five (5) days after the execution of the Consent Order by both parties, the DOE and Occidental shall jointly file written notification of the fact of such execution to the OHA. In addition, if, by September 8, 1995, this Consent Order has neither become effective nor has been withdrawn pursuant to Article IX of this Consent Order, DOE and Occidental shall jointly file with the OHA a request that OHA stay or otherwise defer consideration of all further action in the proceeding styled *In the Matter of OXY USA Inc.*, Case No. LRO-0003, until such time as

the Consent Order has become effective or been withdrawn pursuant to Article IX. In addition, in the event that the plaintiffs in the actions in the United States District Court for the District of the District of Columbia styled *State of Alabama, et al. v. Federal Energy Regulatory Commission, et al.*, Civil Action No. 94-0347-HHG, and *Consolidated Edison Co. of New York, Inc., et al. v. Hazel R. O'Leary, et al.*, Civil Action No. 94-0352-HHG, take an appeal prior to the Effective Date of this Consent Order from the decision filed by that court on June 8, 1995 dismissing their complaints, the DOE and Occidental shall, within fifteen (15) days after the filing of such appeal or by July 7, 1995, whichever is later, jointly file with the appellate court or courts written notification that this Consent Order has been executed, which notice shall request that further proceedings on the appeal be suspended until such time as this Consent Order has become effective or has been withdrawn pursuant to Article IX of this Consent Order.

(b) Within fifteen (15) days after the Effective Date of this Consent Order, Occidental and the DOE shall file or cause to be filed appropriate pleadings and will take all other steps necessary to withdraw all claims and dismiss with prejudice all proceedings covered by this Consent Order then pending before OHA or any other administrative tribunal, and to dismiss with prejudice any court proceeding then pending involving an appeal from or seeking review of a decision by the OHA, the Federal Energy Regulatory Commission ("FERC"), a federal district court or a federal court of appeals in any such proceedings. With respect to the court cases referred to in subparagraph (a) above, the requests to dismiss shall, in addition to other grounds for dismissal that might be applicable, recite that the underlying claim that was the subject of the FERC orders under review in those cases has been fully compromised and released by this Consent Order.

504. Execution of this Consent Order constitutes neither an admission by Occidental nor a finding by the DOE of any violation by Occidental of any statute or regulation. The DOE has determined that it is not appropriate to seek to impose civil penalties for the matters covered by this Consent Order, and the DOE will not seek any such civil penalties. None of the payments or expenditures made by Occidental or OXY pursuant to this Consent Order are to be considered for any purpose as penalties, fines, or forfeitures or as settlement of any potential liability for penalties, fines or forfeitures.

505. Notwithstanding any other provision herein, with respect to the matters covered by this Consent Order, the DOE reserves the right to initiate an enforcement proceeding or to seek appropriate penalties for any newly discovered regulatory violations committed by Occidental, but only if Occidental has knowingly concealed material facts relating to such violations. The DOE also reserves the right to seek appropriate judicial remedies, other than full rescission of this Consent Order, for any knowing misrepresentation of fact material to this Consent Order made by Occidental during the course of the audit or the negotiations that preceded this Consent Order.

#### **VI. Recordkeeping, Reporting and Confidentiality**

601. Occidental shall maintain such records as are necessary to demonstrate compliance with the terms of this Consent Order. Except for such records, Occidental is relieved of its obligation to comply with the recordkeeping requirements of the federal petroleum price and allocation regulations relating to the matters settled by this Consent Order.

602. Occidental will not be subject to any audit requests, report orders, subpoenas, or other administrative discovery by DOE relating to Occidental's activities subject to such regulations relating to the matters settled by this Consent Order.

603. The DOE shall treat all information provided to it by Occidental pursuant to negotiations which were conducted with respect to this Consent Order as confidential. Nothing herein shall alter or modify in any way the parties' obligations regarding confidentiality set forth in that Mediation Agreement between the DOE, Occidental and other parties entered into by the DOE and Occidental on or about January 13, 1995. Nor shall anything herein be deemed to waive or prejudice any right Occidental may have independent of this Consent Order or such Mediation Agreement regarding the disclosure of confidential information.

#### **VII. Contractual Undertaking**

701. It is the understanding and express intention of Occidental and the DOE that this Consent Order constitutes a legally enforceable contractual undertaking that is binding on the parties and their successors and assigns. Notwithstanding any other provision herein, Occidental (and its successors and assigns) and the DOE agree that the sole and exclusive remedy for a breach

of this Consent Order shall be the filing of a civil action in an appropriate United States district court, and the DOE also reserves the right to seek appropriate penalties and interest for any failure to comply with the terms of this Consent Order. The DOE will undertake the defense of the Consent Order, as made effective, in response to any litigation challenging the Consent Order's validity in which the DOE, the FERC or any of their officials or employees is named as a party. Occidental agrees to cooperate with the DOE in the defense of any such challenge. Nothing in this Consent Order shall be construed as preventing Occidental from also participating as a party in such defense.

#### **VIII. Final Order**

801. Upon becoming effective, this Consent Order shall be a final order of the DOE having the same force and effect as a remedial order issued pursuant to Section 503 of the DOE Act, 42 U.S.C. 7193, and 10 CFR 205.199B. Occidental hereby waives its right to administrative or judicial review of this Order, but Occidental reserves the right to participate in any such review initiated by a third party.

#### **IX. Effective Date**

901. This Consent Order shall become effective as a final order of the DOE on the date that notice to that effect is published in the **Federal Register** (the "Effective Date"). Prior to that date, the DOE will publish notice in the **Federal Register** that it proposes to make this Consent Order final and, in that notice, will provide not less than thirty (30) days for members of the public to submit written comments. The DOE will consider all written comments in deciding whether to adopt the Consent Order as a final order, to withdraw agreement to the Consent Order, or to attempt to renegotiate the terms of the Consent Order.

902. Until the Effective Date, the DOE reserves the right to withdraw consent to this Consent Order by written notice to Occidental, in which event this Consent Order shall be null and void. If this Consent Order is not made effective on or before the one hundred twentieth (120th) day following execution by Occidental, Occidental may, at any time thereafter until the Effective Date, withdraw its agreement to this Consent Order by written notice to the DOE, in which event this Consent Order shall be null and void.

I, the undersigned, a duly authorized representative of Occidental Petroleum Corporation and OXY USA Inc., hereby agree to and accept on behalf of Occidental

Petroleum Corporation and OXY USA Inc. the foregoing Consent Order.

Dated: June 27, 1995.

Donald P. de Brier,  
*Executive Vice President and General Counsel, Occidental Petroleum Corporation.*

I, the undersigned, a duly authorized representative of the United States Department of Energy, hereby agree to and accept on behalf of the Department of Energy the foregoing Consent Order.

Dated: June 27, 1995.

Eric J. Fygi,  
*Deputy General Counsel, U.S. Department of Energy.*

[FR Doc. 95-16608 Filed 7-5-95; 8:45 am]

BILLING CODE 6450-01-P

#### **Environmental Impact Statement for Proposed Medical Isotope Production**

**AGENCY:** Department of Energy.

**ACTION:** Notice of Intent.

**SUMMARY:** The Department of Energy (DOE) announces its intent to hold scoping meetings and prepare an Environmental Impact Statement (EIS) on the proposed domestic production of molybdenum-99 (Mo-99) and related medical isotopes (iodine-125, iodine-131, and xenon-133). The EIS will describe the need for and purpose of the proposed action, the alternatives for satisfying the need (as well as a "no action" alternative), and analyze the impacts of producing Mo-99 and related medical isotopes using reasonable alternative facilities.

**DATES:** Written comments must be postmarked not later than August 7, 1995 to ensure consideration. Comments received after that date will be considered to the extent practicable. The locations, dates and times of the public scoping meetings are included in the Supplementary Information section of this notice, and will also be announced by additional appropriate means. Oral and written comments will be considered equally in the preparation of the EIS.

**ADDRESSES:** Written comments on the scope of the medical isotope production EIS, or other matters regarding this environmental review, should be addressed to: Mr. Wade Carroll, NEPA Document Manager, Office of Isotope Production and Distribution, NE-70, U.S. Department of Energy, 19901 Germantown Road, Germantown, Maryland, 20874, Attn: Medical Isotope Production EIS. Mr. Carroll may be contacted by telephone at (301) 903-7731, facsimile (301) 903-5434.

**FOR FURTHER INFORMATION CONTACT:** For general information on the DOE NEPA